IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

J U D G M E N T

S.B.CIVIL MISC. APPEAL NO.490/1996
(National Insurance Co. Ltd. Vs. Sh.Prabhu Lal and ors.)

DATE OF JUDGMENT : 13-04-2007

P R E S E N T

HON'BLE MR.JUSTICE R.S.CHAUHAN

Mr.Praveen Jain & Mr.T.P.Sharma, for the appellant-Ins.Company.
Mr.Rohan Jain, for the respondent-owner & driver.
Mr.P.R.S.Rajawat, for the claimants.

BY THE COURT:

The appellant Insurance Company has challenged the order dated 8.1.1996 passed by the Motor Accident Claims Tribunal, Jhalawar whereby the learned Tribunal has awarded the compensation of Rs.1,17,000/- for the injuries received by the claimant Prabhu Lal.

2. The brief facts of the case are that on 13.5.1994, the claimant along with his family including his wife and daughter were travelling in a Bus No.RJ-17/P-0081. The bus was travelling from Odia Kheri to village Shampura. Around 6.00 PM in the evening when the bus reached the village Dudalia, it turned turtle. Due to this accident, the claimant Prabhulal suffered a fracture of left leg. Consequently,

he became physically handicapped. At the time of accident, he was earning Rs.3,000/- per month. Therefore, he filed a claim petition before the learned Tribunal for the compensation of Rs.,4,60,000/-. The learned Tribunal issued notices to the appellant, and the owner & the driver of the bus. The owner and driver of the bus filed their reply and denied the occurrence of the accident.

3. On the other hand, the Insurance Company contended that the driver did not have any valid licence at that time. Therefore, terms & conditions of the insurance policy have been violated by the owner of the bus. Hence they were not liabl to pay the compensation as claimed by the injured. In support of his case, the claimant examined three witnesses and submitted number of documents. On their behalf, the insurance Company examined Babulal as witness. After going through the oral and documentary evidence, the learned Tribunal granted the compensation as aforementioned. Hence, this appeal by the Insurance Company.

4. Mr.Praveen Jain, learned counsel for the Insurance Company has argued that the Insurance Company had taken a categorical stand that the driver did not have any licence whatsoever. This was also stated by Babulal, before the learned Tribunal. He furher contended that the criminal case filed against the driver was also under Sec.3/181 of the Motor Vehicles Act. This fact also shows that

even according to the police, the driver did not possess any licence, valid or otherwise. Lastly he has contended that since the notices were issued to the owner and driver of the bus, the burden lay on them to prove the fact that the driver had, indeed, possessed a valid licence. The burden has not been discharged by the owner and driver. Therefore, an adverse inference can be drawn against them. Hence, the Insurance Company cannot be held liable for the payment of compensation.

5. On the other hand, Mr.Rohan Jain, learned counsel for the owner & driver has contended that it is for the Insurance Company to prove the fact that the driver did not have any licence with them. Moreover, since the bus was insured with the Insurance Company, it is for the company to pay the compensation.

6. Mr.P.R.S.Rajawat, learned counsels for the claimants has contended that the contest is between the Insurance Company and the owner. But in the fight between these two parties, the claimants who are suffering, have not been paid compensation so far.

7. We have heard learned counsel for the parties, and perused the impugned order.

8. Once the Insurance Company had taken the stand before the

Tribunal that the driver did not possess any licence, it was for the owner to prove the fact that the driver did, indeed, possess a valid licence at the time of alleged accident. For, the owner has to establish that he has fulfilled all the conditions of the Insurance policy. Once the conditions of the policy is that the vehicle must be driven by a person possessing a valid licence, until & unless, this factum is proved by the owner, he cannot escape from the liability of paying the compensation to the injured claimant. Since the owner in the present case did not discharge this burden, the learned Tribunal should have drawn an adverse inference against him. Our view is fortified by the deceision in the case of United India Insurance Co. Ltd. Vs. Gian Chand and ors. (AIR 1997 SC 3824) wherein the Hon'ble Supreme Court had observed that once the notice was issued to the owner, it was for the owner to first establish that the driver was having valid licence. In case the owner fails to prove this fact, an adverse inference should have been drawn against the owner.

9. Since it was alleged by the Insurance Company that the driver did not possess any licence, valid or otherwise, it would be difficult for the Insurance company to prove this fact. It is not the case of the Insurance company that the driver had any invalid or forged licence. The factum of forged or invalid license could be proved by the Insurance company. But, the insurance Company cannot prove

that the driver did not possess any license. Therefore, the reasoning given by the learned Tribunal that the Insurance Company has not discharged its burden of proving the fact that the driver did not have any licence, is an erroneous reasoning.

10. However, even if contention raised by learned counsel for the Insurance company is accepted that the driver did not possess a licence, even then it is merely a breach of condition of the Insurance policy. Still, the Insurance company is liable to pay the compensation to the claimant at the first instance and to recover the compensation amount from the owner.

11. During the course of arguments, it was pointed out that the total amount of compensation, has been deposited by the Insurance company before the High Court as directed by the Division Bench vide order dated 4.9.2003 in D.B.Spl. Appeal No.65/2003. Vide order dated 11.5.2006, the learned Single Judge has further directed that 50% of the total amount awarded by the Tribunal, with interest, shall be disbursed to the claimants in accordance with direction given by the Tribunal after adjusting the amount already paid, and the remaining 50% shall be kept by the High Court till by the decision of this appeal. The amount shall be kept in fixed deposit account for a period of five years with any Nationalized Bank.

12. Considering these two orders passed by this court, we are of the considered opinion that remaining 50% amount shall be disbursed to the claimants within a period of one month. The Deputy Registrar (Judl.), Raj. High Court, Jaipur Bench, Jaipur is directed to renew the said F.D.R. and disburse the remaining amount to the claimant within the stipulated period as aforementioned.

R.S.CHAUHAN,J.

s.rawat/-